

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

OMAR MORGAN,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 3:20-185
	:	
v.	:	(JUDGE MANNION)
	:	
PLYMOUTH BOROUGH POLICE	:	
DEPARTMENT, <u>et al</u>,	:	
	:	
Defendants	:	
	:	

ORDER

Pending before the court is the report of Magistrate Judge Karoline Mehalchick (Doc. 19) which recommends that the defendants' motion for summary judgment (Doc. 7) be granted, the plaintiff's motion for appointment of counsel (Doc. 18) be denied and the instant action be closed. No objections have been filed to the report. Based upon the court's review of the record, Judge Mehalchick's report will be adopted in its entirety.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing

Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

By way of relevant background, the plaintiff filed a three-count complaint against Plymouth Borough Police Officers Ogden and Lewis, the Plymouth Borough Police Department and five John Doe defendants. The plaintiff claims violations of his civil rights under 42 U.S.C. §1983, as well as state law violations, in relation to his arrest on February 12, 2019.

After setting forth the undisputed material facts of record, Judge Mehalchick determined that defendants Ogden and Lewis were entitled to summary judgment on the only federal count against them, which set forth an excessive force claim. In doing so, Judge Mehalchick found that the record evidence demonstrates that the defendants' use of force was not excessive under objective standards of reasonableness announced in Green v. New Jersey State Police, 246 F.App'x 158, 161 (3d Cir. 2007).

Judge Mehalchick recommends that the court decline to exercise supplemental jurisdiction over the state law claims because the original

jurisdiction claims have been disposed of by way of summary judgment. As such, she recommends dismissal of these claims without prejudice to allow the plaintiff to bring them in state court.

Finally, because the Plymouth Borough Police Department was not mentioned at all in the material allegations of the complaint, Judge Mehalchick recommends that the defendants' motion for summary judgment be granted as to this defendant.

The court has reviewed the record in the instant action and finds no clear error of record. Moreover, the court agrees with the sound reasoning which led Judge Mehalchick to her conclusions. As such, the report and recommendation of Judge Mehalchick will be adopted in its entirety as the decision of the court.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1)** The report and recommendation of Judge Mehalchick **(Doc. 19)** is **ADOPTED IN ITS ENTIRETY** as the decision of the court.
- (2)** The defendants' motion for summary judgment, **(Doc. 7)** is **GRANTED.**

(3) The plaintiff's motion for appointment of counsel **(Doc. 18)** is
DISMISSED AS MOOT.

(4) The Clerk of Court is directed to **CLOSE THIS CASE.**

s/ Malachy E. Mannion

MALACHY E. MANNION

United States District Judge

DATE: February 23, 2021

20-185-01